

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
M. J. Phillips Communications, Inc.)	File No.: EB-FIELDNER-13-00011961
Licensee of Stations WJL and WHB714)	
Registrant of Antenna Structure No. 1245343)	NOV No.: V201432400005
Niagara Falls, New York)	
)	Facility ID: 39517

NOTICE OF VIOLATION

Released: November 27, 2013

By the District Director, Philadelphia Office, Northeast Region, Enforcement Bureau:

1. This is a Notice of Violation (Notice) issued pursuant to Section 1.89 of the Commission's rules (Rules)¹ to M. J. Phillips Communications, Inc. (Phillips), licensee of AM Radio Station WJL and Aural Studio Transmitter Link Station WHB714 and registrant of antenna structure number 1245343 in Niagara Falls, New York. Pursuant to Section 1.89(a) of the Rules, issuance of this Notice does not preclude the Enforcement Bureau from further action if warranted, including issuing a Notice of Apparent Liability for Forfeiture for the violation noted herein.²

2. On October 24, 2013, agents of the Enforcement Bureau's Philadelphia Office inspected Stations WJL and WHB714 at 976-B Union Road, West Seneca, New York and antenna structure number 1245343 in Niagara Falls, New York, and observed the following violations:

- a. 47 C.F.R. § 1.903(a): "Stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service as set forth in this title and with a valid authorization granted by the Commission under the provisions of this part..." At the time of inspection, Phillips was operating a Studio Transmitter Link (STL) on the frequency 947.5 MHz from an unauthorized location of 976-B Union Road, West Seneca, New York. The license for Station WHB714 authorizes Phillips to operate the STL at 1224 Main Street, Niagara Falls, New York.

¹ 47 C.F.R. § 1.89.

² 47 C.F.R. § 1.89(a).

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- b. 47 C.F.R. § 11.35(a): “EAS Participants are responsible for ensuring that EAS Encoders, EAS Decoders, Attention Signal generating and receiving equipment, and Intermediate Devices used as part of the EAS to decode and/or encode messages formatted in the EAS Protocol and/or the Common Alerting Protocol (CAP) are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation. Additionally, EAS Participants must determine the cause of any failure to receive the required tests or activations specified in §11.61(a)(1) and (2). Appropriate entries indicating reasons why any tests were not received must be made in the broadcast station log as specified in §§73.1820 and 73.1840 of this chapter for all broadcast streams...” Station WJLL operates from two different main studio locations throughout the course of the day.³ The main studio in Niagara Falls, New York did not have EAS equipment installed. The main studio in West Seneca, New York, had EAS equipment installed; however, the station did not have records to indicate their equipment was receiving CAP-formatted tests. Additionally, there were no records to determine the cause of failure to receive any CAP message.
- c. 47 C.F.R. § 17.47(a)(1): “The owner of any antenna structure which is registered with the Commission and has been assigned lighting specifications referenced in this part: Shall make an observation of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, to insure that all such lights are functioning properly as required; or alternatively, (2) Shall provide and properly maintain an automatic alarm system designed to detect any failure of such lights and to provide indication of such failure to the owner.” According to the President and Program Director, the antenna structure’s lights are monitored visually by three individuals. On October 24, 2013 at 6:58 p.m., the agents found that all of the antenna structure’s lights were extinguished. According to the President and Program Director, the lights were not monitored that day. Furthermore, the President and Program Director was aware that the side lights were extinguished but did not know when the outage occurred with the top light.

³ Station WJLL has two main studio locations: (1) 976-B Union Road, West Seneca, New York 14224 and (2) 1201 Pine Avenue, Niagara Falls, New York, 14301.

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3. Pursuant to Section 308(b) of the Communications Act of 1934, as amended,⁴ and Section 1.89 of the Rules, we seek additional information concerning the violations and any remedial actions taken. Therefore, Phillips must submit a written statement concerning this matter within twenty (20) days of release of this Notice. The response (i) must fully explain each violation, including all relevant surrounding facts and circumstances, (ii) must contain a statement of the specific action(s) taken to correct each violation and preclude recurrence, and (iii) must include a time line for completion of any pending corrective action(s). The response must be complete in itself and must not be abbreviated by reference to other communications or answers to other notices.⁵

4. In accordance with Section 1.16 of the Rules, we direct Phillips to support its response to this Notice with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of Phillips with personal knowledge of the representations provided in Phillips' response, verifying the truth and accuracy of the information therein,⁶ and confirming that all of the information requested by this Notice which is in the licensee's possession, custody, control, or knowledge has been produced. To knowingly and willfully make any false statement or conceal any material fact in reply to this Notice is punishable by fine or imprisonment under Title 18 of the U.S. Code.⁷

5. All replies and documentation sent in response to this Notice should be marked with the File No. and NOV No. specified above, and mailed to the following address:

Federal Communications Commission
Philadelphia Office
One Oxford Valley Building Office, Suite 404
2300 E. Lincoln Highway
Langhorne, Pennsylvania 19047

6. This Notice shall be sent to M. J. Phillips Communications, Inc. at its address of record.

⁴ 47 U.S.C. § 308(b).

⁵ 47 C.F.R. § 1.89(c).

⁶ Section 1.16 of the Rules provides that “[a]ny document to be filed with the Federal Communications Commission and which is required by any law, rule or other regulation of the United States to be supported, evidenced, established or proved by a written sworn declaration, verification, certificate, statement, oath or affidavit by the person making the same, may be supported, evidenced, established or proved by the unsworn declaration, certification, verification, or statement in writing of such person Such declaration shall be subscribed by the declarant as true under penalty of perjury, and dated, in substantially the following form . . . : ‘I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)’.” 47 C.F.R. § 1.16.

⁷ 18 U.S.C. § 1001 *et seq.* See also 47 C.F.R. § 1.17.

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7. The Privacy Act of 1974⁸ requires that we advise you that the Commission will use all relevant material information before it, including any information disclosed in your reply, to determine what, if any, enforcement action is required to ensure compliance.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
District Director
Philadelphia Office
Northeast Region
Enforcement Bureau

⁸ P.L. 93-579, 5 U.S.C. § 552a(e)(3).